FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

FOO/159309

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 2014, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Fond du Lac County Dept. of Social Services to reduce FoodShare benefits (FS), a hearing was held on August 27, 2014, by telephone.

The issue for determination is whether the county correctly determined FS after a change in law.

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Deborah Bohlman
Fond du Lac County Dept. of Social Services
87 Vincent Street
Fond du Lac, WI 54935-4595

ADMINISTRATIVE LAW JUDGE:
Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Fond du Lac County.
2. Petitioner receives FS as a one-person household. She received $90 FS in July, 2014.
3. Petitioner had a review in July. She reported that utilities are included in her rent, but she does have a telephone expense. Petitioner did not receive energy assistance in the twelve months prior to the review.

4. No changes were reported. However, the Department changed its policy toward counting shelter expenses in the FS determination. Previously all FS households received a $450 utility expense. The policy changed to provide that only expenses actually paid by the household can be counted. Petitioner received only a $30 telephone expense. As a result of the changes, petitioner's FS decreased to $15 effective August 1, 2014.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is $152 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding $35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

In July, 2014, petitioner's shelter deduction was $344.61 resulting from rent of $231 and a utility expense of $450. For August she received no shelter deduction because her rent was $231 and her utility expense was just $30 for her telephone. The $261 shelter expense was less than one-half of petitioner's net income.

Prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of $1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance of $450. Actual utility usage did not matter.

The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than $20 to receive the $450 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). Therefore households that do not receive energy assistance receive the utility standard based on the utility obligation actually incurred by the household. Petitioner did not receive energy assistance and her only monthly utility obligation is her phone.

I must conclude that the agency correctly reduced petitioner's FS. The change was due to a change in policy that was forced by federal FS law. Petitioner testified that the reduction has left her in a difficult financial situation. However, the Division of Hearings and Appeals does not have authority to order a higher FS amount than the amount calculated by the FS rules. I cannot consider expenses that are not specifically listed in the FS rules.

It was noted that petitioner might have medical expenses above $35 per month. If she verifies the expenses she will get a deduction for them as described in the first paragraph of the Discussion.

CONCLUSIONS OF LAW

The agency correctly reduced petitioner's FS due to a reduction in her shelter expense.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 29th day of August, 2014

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\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 29, 2014.

Fond Du Lac County Department of Social Services
Division of Health Care Access and Accountability